

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed on February 17, 2004. At the time of the Office Action, Claims 1-79 were pending in the Application and Claims 1-22 and 47-79 were withdrawn from consideration. In the Office Action, the Examiner rejects Claims 23-46 and 80. In order to advance prosecution of this Application, Claims 24, 32, and 80 have been amended. In addition, Applicants have added Claims 81- 83. Applicants submit that no new matter has been added by these amendments or the new claims. For at least the reasons discussed below, Applicants respectfully request reconsideration and favorable action in this Application.

**Rejections under 35 U.S. C. §103**

The Examiner rejects Claims 23-41 and 43-45 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,064,856 to Lee et al. ("*Lee*") in view of U.S. Patent No. 6,496,681 B1 to Linton ("*Linton*"). Claims 42 and 46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Lee* in view of *Linton*, further in view of U.S. Patent No. 6,190,178 B1 to Oh ("*Oh*"). Claim 80 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Lee* in view of *Linton*. Applicants respectfully traverse these rejections for the reasons discussed below.

As an initial matter, Applicants are swearing behind *Linton* in the attached Section 1.131 affidavit, removing *Linton* from being available as prior art. Thus, the above rejections are improper and the claims are allowable. Favorable action is requested.

In addition, amended Claim 24 recites, "electronically providing a score for the assessment procedure to a parent of the student." Claims 32, and 81-83 recite similar limitations. Applicants submit that *Lee* and *Linton* (even if available as art, which it is not) fail to teach this limitation. In particular, *Lee* merely teaches that a teacher's workstation is notified if a student is having difficulty with material, so the teacher can provide one-on-one instructions to students who need additional aid. *Lee*, Col. 7, Lines 41-47; Col. 2, Lines 53-55. *Linton* teaches that reports of a students progress may be accessed by an administrator to track both educational and teacher development. Col. 7, Lines 33-49; Col. 2, Lines 54-59. The teaching of the invention in some embodiments by electronically providing parents access to a students scores as they are determined facilitates parental involvement in the academic development of the student. Page 3, Lines 13-19. In contrast, the references do not

teach the desirability of providing electronic access to the system. Indeed, the references teach away from such a modification because the references teaches that hardcopies of progress reports or remedial notes maybe printed “for the student to take home to his or her parents.” *Lee*, Col. 9, Lines 18-20. Accordingly, Applicants respectfully request allowance of Independent Claim 23 and its respective dependents.

Claims 32 and 80-83 recite limitations that are similar to the limitation of Claim 24 discussed above. Therefore, these claims are allowable for reasons analogous to those discussed above in connection with Claim 24.

Claim 80 recites, “the logic further operable to ... display an advertisement to the student in response to accessing the system.” Applicants submit that *Lee*, *Linton*, and *Oh* fail to teach this limitation. For at least this reason the claim is allowable. In addition, there is no suggestion or motivation to modify the teachings of *Lee* to include advertisements because the disclosed system is intended to revert the role of teacher from being an administrator and public relations officer back to a teacher. *Lee*, Col. 2, Lines 43-45. By providing advertisements during lessons plans, this goal would be frustrate because the teacher would effectively become an advertiser and thus detract from the role of a teacher. Accordingly, Applicants respectfully request reconsideration and allowance of Claim 80.

### **Objective Criteria**

In addition to the above, Applicants submit the claims would not have been obvious over the cited references for the additional reason that objective criteria indicates such combinations would not have been obvious. Objective criteria, including commercial success, must be considered by the Examiner, when submitted, as required by the M.P.E.P. and the Federal Circuit. The attached declaration under 37 C.F.R. Section 1.132 establishes that educational software products embodying the inventions of the present application have met with great commercial success and that such success is believed to be due to the functionality provided by the software, as opposed to marketing effects. In particular, the attached declaration indicates that it is the combination of numerous functionalities that is believed to make the product desirable, as opposed to other products possessing only subsets of such functionality. Given this commercial success, it cannot be simply stated that “it would have been obvious” to combine limitations from different references.

**CONCLUSION**

Applicants have made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicants respectfully requests full allowance of all the pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, please feel free to contact the undersigned attorney for Applicants.

A small entity fee of \$475.00 is enclosed to cover the cost of a three-month extension of time. The Commissioner is hereby authorized to charge any other fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicants



Bradley P. Williams  
Reg. No. 40,227

Date: August 13, 2004

Customer Number: **05073**